IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 15779 of 2007(C)

PETITIONER:

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1. V.CHANDRAN, S/O.NARAYANAN,
   VATTAPARAMBIL HOUSE, AMAYUR, KOPPAM.

2. SUDHA, W/O.V.CHANDRAN,
   VATTAPARAMBIL HOUSE, AMAYUR, KOPPAM.

3. MARAKKAR, S/O.KALLINGAL SAIDALIKUTTY,
   KULAPPULLY AMSOM DESOM, KULAPPULLY P.O.,
   SHORNUR-2.

4. MUHAMMEDKUTTY, S/O.KALLINGAL
   SAIDALIKUTTY, KULAPPULLY AMSOM DESOM,
   KULAPPULLY P.O., SHORNUR-2.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED
   BY DISTRICT COLLECTOR, PALAKKAD.

2. THE TAHSILDAR, OTTAPALAM TALUK,
   TALUK OFFICE, OTTAPALAM.

3. THE VILLAGE OFFICER, SHORNUR-II
   VILLAGE, VILLAGE OFFICE, SHORNUR.

4. TALUK LAND BOARD, OTTAPALAM,
   REPRESENTED BY ITS CHAIRMAN, TALUK OFFICE,
   OTTAPALAM.

BY GOVT. PLEADER SRI.M.R.SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO 15779/07

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1.	COPY OF PROPERTY PURCHASED BY 1ST PETITIONER VIDE SALE DEED NO.133/2002 OF S.R.O. SHORNUR
EXT.P1(a).	COPY OF PROPERTY PURCHASED BY 1ST AND 2ND PETITIONERS VIDE SALE DEED NO.1289/2004 OF S.R.O. SHORNUR
EXT.P2.	COPY OF PROPERTY PURCHASED BY 3RD AND 4TH PETITIONERS VIDE SALE DEED NO.840/2002 OF S.R.O. SHORNUR
EXT.P3.	COPY OF THE BASIC TAX RECEIPT ISSUED IN FAVOUR OF 1ST PETITIONER
EXT.P4.	COPY OF THE BASIC TAX RECEIPT ISSUED IN FAVOUR OF 3RD AND 4TH PETITIONERS
EXT.P5.	COPY OF POSSESSION CERTIFICATE ISSUED IN FAVOUR OF THE 1ST AND 2ND PETITIONERS
EXT.P5(a).	COPY OF THE POSSESSION CERTIFICATE ISSUED IN FAVOUR OF THE 1ST PETITIONER
EXT.P6.	COPY OF THE POSSESSION CERTIFICATE ISSUED IN FAVOUR OF THE 3RD AND 4TH PETITIONERS
EXT.P7.	PHOTOGRAPH SHOWING THE BUILDING SREE MUTHAPPAN SHOPPING COMPLEX CONSTRUCTED IN THE PROPERTY OF THE 1ST PETITIONER
EXT.P7(a).	PHOTOGRAPH SHOWING THE BUILDING MUTHAPPAN SHOPPING COMPLEX CONSTRUCTED IN THE JOINT PROPERTY OF THE 1ST AND 2ND PETITIONERS
EXT.P7(b).	PHOTOGRAPH SHOWING THE BUILDING KALLUNGAL SHOPPING COMPLEX CONSTRUCTED IN THE JOINT PROPERTY OF THE 3RD AND 4TH PETITIONERS
EXT.P8.	COPY OF THE LAWYER NOTICE DT. 12.2.07 ISSUED IN FAVOUR OF THE 1ST AND 2ND PETITIONERS
EXT.P9.	COPY OF THE REPLY DT. 15.2.07 ISSUED BY THE 3RD RESPONDENT TO EXT.P8 LAWYER NOTIC
EXT.P10.	COPY OF AFFIDAVIT DT. 26.7.07 SUBMITTED BY DR. P. RAVEENDRANNATHAN

/TRUE COPY/

PA TO JUDGE.

ANTONY DOMINIC, J.

W.P.(C). NO. 15779 OF 2007

Dated this the 18th day of September, 2007

J U D G M E N T

This writ petition has been filed praying for directing the 3rd respondent to accept basic tax in respect of the properties purchased by the petitioners by virtue of Exts. P1, P1(a) and P2 documents and also to issue possession certificate.

2. Ceiling Case No.1096/76 before the Taluk Land Board, Ottappalam was initiated against the Purayannur Industries, Shornur in Ottappalam Taluk, which involved a total extent of 21.24 acres. The Taluk Land Board found that out of the said property an extent of 10.95 acres was eligible for exemption under Section 81(k) of the Kerala Land Reforms Act (hereinafter referred to as "the Act") and that the balance of 10.29 acres was found to be within the ceiling limits allowed under the Act. Accordingly, by order dt. 5.10.96 the ceiling case was dropped against the aforesaid firm.

3. The partners of the firm transferred an extent of 2.55 acres of land in Sy.No.288/1 to the Director of M/S Line Equipments Company as per document No.1371, 1372 and 1373/84 of the Sub Registrar of Pattambi and the Managing Director of M/S Line Equipments Company transferred 2.35 acres to one Dr.Raveendranathan. Out of this, as per Ext.P1 sale deed, the 1st petitioner purchased 35.4 cents of land and the 1st and 2nd petitioners jointly purchased 49 cents of land as per Ext.P1(a). Similarly an

extent of 21.55 cents of land was purchased by 3rd and 4th petitioners as per Ext.P2 sale deed. It is submitted that subsequently they have paid the basic tax in respect of the land as per Exts. P3 and P4 and an application was made by them to the 3rd respondent for obtaining the possession certificate in respect of the aforesaid three plots and the same was issued to them by Exts. P5, P5(a) and P6.

4. On the strength of the title in their favour, petitioners got a building plan approved by the local authority and constructed a commercial building. On its completion, certain rooms were also let out to some of the tenants. They wanted a possession certificate in respect of the land covered by Exts. P1, P1(a) and P2 and made an application to the 2nd and 3rd respondents and the same was denied by them. When their attempts to get the certificate failed, petitioners issued Ext.P8 lawyer notice to the respondents and the same was replied by Ext.P9, which stated that proceedings under the Act are pending in respect of their property. Mention is also made about pendency of a vigilance case in relation to the acquisition of the neighbouring property the purpose of a bus stand. It is in the aforesaid circumstances, for compelling the authorities to accept the basic tax and for the issuance of possession certificate, this writ petition has been filed by the petitioners.

5. Counter affidavit has been filed by the respondents. In the counter affidavit after tracing title of the petitioners, respondents submit that

on finding that there was violation of Section 81(k) of the Act, by letter dated 28.11.02 it was recommended to the District Collector, Palakkad to take action for the violation of Section 81(k) of the Act. It is also stated that the Chairman of the Taluk Land Board, Ottappalam, has also recommended that action be initiated against the land in question. It is stated that if the terms of exemption as per Section 81(k) are violated, the person concerned will cease to be eligible for exemption under the said Act. According to the respondents this is a case where the District Collector had heard the parties and orders have not been issued by the District Collector so far. Thus the only reason stated in the affidavit is that there has been violation of Section 81(k) of the Act.

6. I have heard the learned counsel for the petitioner and the learned Government Pleader.

7. On the facts as stated above, it is obvious that even much before the recommendation as per the letter dated 28.11.02 was made for the alleged violation of Section 81 (k) of the Act, construction of the commercial building was completed in the land in question. In terms of the provisions contained in Section 81 (k) of the Act, the exemption under the said clause will cease to apply if such land is not actually used for the purpose for which it has been set apart within such time as the District Collector may by notice to the undertaking specify in that behalf. In this case, even in the counter affidavit filed by the respondents, there is no

contention that a notice as contemplated in the proviso to Section 81(k) of the Act has been issued. In the absence of a notice, as specified in the proviso, it cannot be contended that the land in question has ceased to be eligible for exemption in terms of Section 81(k) of the Act. Heavy reliance is placed on the decision of the Apex Court in S***tate of Kerala and others v. Dr. S.G. Sarvothama*** Prabhu [AIR 1999 S.C. 1195] which fully supports the contention of the learned Senior Counsel for the petitioner. Therefore, there is no substance in the contention raised by the respondents that in view of the pendency of the proceedings before the District Collector they could not accept the basic tax or issue possession certificate to the petitioners in respect of the land concerned by their title deeds.

8. In the above facts and circumstances, I see no justification in the stand of the respondents in refusing to accept the basic tax or issuance of the possession certificate to the petitioners in respect of the property as per Exts. P1, P1(a) and P2. Therefore, there will be a direction to the 3rd respondent to accept the basic tax and to issue possession certificate, as sought for by the petitioners, within a period of four weeks from the date of production of a copy of this judgment.

The writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE

vps

K.R. UDAYABHANU, JUDGE

CRL.A. NOS.721/99 & 213/02

JUDGMENT

13TH SEPTEMBER, 2007

CRL.R.P.769/00

ORDER IN CRL.M.P. NO.4143/00 IN CRL.R.P.769/00

DISMISSED

13.9.07 SD/- **K.R. UDAYABHANU, JUDGE**

/TRUE COPY/

PA TO JUDGE.